

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 07-57127

SOLAR STAMPING AND
MANUFACTURING, LLC.

Chapter 7

Judge Thomas J. Tucker

Debtor.

STUART A. GOLD,

Plaintiff,

v.

Adv. Pro. No. 08-4656

DOBDAY MANUFACTURING CO., INC.

Defendant.

ORDER VACATING WRIT OF GARNISHMENT

This adversary proceeding is before the Court on the Plaintiff's writ of garnishment, to which the Defendant has objected (Docket ## 24 and 25). The Court concludes that a hearing is not necessary.

On June 9, 2008, Plaintiff Stuart A. Gold filed a complaint against Defendant Dobday Manufacturing Company, Inc. ("Dobday"), initiating this adversary proceeding. Months later, after being informed that the parties had agreed to a settlement, the Court entered a text order that provided:

The parties have informed the Court that this adversary proceeding has been settled, subject to approval by the Court of the settlement in the main bankruptcy case. Plaintiff has filed a motion for approval of the settlement under Fed.R.Bankr.P. 9019. Plaintiff must submit an order of dismissal or consent judgment, whichever is appropriate, no later than three days after entry of an order approving the settlement. If Plaintiff does not comply with these

requirements, the Court may dismiss this adversary proceeding, without prejudice. This order varies the procedure contained in L.B.R. 9019-1.

(Order, filed January 9, 2009, Docket # 22). On January 16, 2009, the Court entered a text order dismissing the adversary proceeding “for failure to comply with the text order entered on 1/09/09.” (Docket # 23).

On October 1, 2009, Plaintiff filed a “Request and Writ for Garnishment (NonPeriodic)” (Docket # 24) in this adversary proceeding. This document states in paragraph 1 that the Trustee obtained a \$20,000 judgment against Dobday on January 9, 2009. However, there is no such judgment in this adversary proceeding.

Plaintiff might argue that the order authorizing settlement in the main bankruptcy case (Docket # 357 in Case No. 07-57127) is itself a judgment against Dobday.¹ But even if that is so, the writ of garnishment was filed in the wrong case (the adversary proceeding). The Clerk should not have signed the writ of garnishment, and Plaintiff should not have filed it, since the writ had the case number on it for this adversary proceeding. There is no judgment in this adversary proceeding which could form the basis for a writ of garnishment. Rather, there is only an order *dismissing* this adversary proceeding.

For these reasons,

IT IS ORDERED that the writ of garnishment (Docket # 24) is VACATED.

¹ Plaintiff should not have included judgment-type language in the order approving settlement that was filed in the main case. The Court’s January 9, 2009 text order filed in this adversary proceeding (Docket # 22) clearly contemplated and required that a separate judgment order (or dismissal order) be filed, in this adversary proceeding, after the Court entered an order in the main case approving the settlement.

Signed on October 27, 2009

/s/ Thomas J. Tucker

**Thomas J. Tucker
United States Bankruptcy Judge**